

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appeal No.: 2006-2896

Applicants: Kevin FOLEY & Kim BANG

Application Serial No.: 09/412,408

Filing Date: October 5, 1999

Title: ELECTRONIC TRADING SYSTEM SUPPORTING
ANONYMOUS NEGOTIATION AND INDICATORS OF
INTEREST

Examiner: CALVIN LOYD HEWITT II

Group Art Unit: 3621

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

SUPPLEMENTAL REQUEST FOR REHEARING

This paper supplements Applicants Request for Rehearing filed April 9, 2007. The purpose of this paper is to address the impact on this appeal, if any, of the United States Supreme Court's April 30, 2007 decision in *KSR International Co. v. Teleflex Inc.*, __ US __ (2007).

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Applicants submit that the issues raised in their Request for Rehearing survive the opinion in *KSR*, where the Supreme Court rejected the "teaching, suggestion, motivation" (TSM) approach of the Federal Circuit, finding it rigid and inconsistent with the Court's expansive and flexible approach, and incompatible with the Court's precedent.

Silverman et al. (Claims 1-15)

To determine obviousness under the flexible approach, the Board must still consider what *Silverman et al.* teaches, the level of ordinary skill in the art, and whether it is obvious to one of ordinary skill in the art to combine *Silverman et al.*'s teachings with those of *Tilfors et al.* The Request for Rehearing points out that the *Silverman et al.* system is based on parties transacting only with other parties who have entered parameters by which potential parties to a transaction can be screened. This teaches away from the system claimed in claim 1, for example, in which there can be automatic execution without negotiation and without *Silverman et al.*'s screening between a system user and a party who has not entered screening or filtering parameters. The issue raised in the Request for Rehearing remains regardless of whether the TSM or the KSR approach are used to determine obviousness.

Similarly, the issue raised in the Request for Rehearing regarding determination of the level of skill remains under both the TSM and KSR approaches.

The Meaning of "Automatic" in Claims 16-29

The other issue raised in the Request for Rehearing is whether the negotiated matching system of *Silverman et al.* encompasses a system which includes both automatic matching and automatic execution, i.e., "to automatically match orders entered into the user stations by users and to automatically execute trades of matched orders." This turns on what one of ordinary skill in the art would interpret both automatic matching and automatic execution to mean. It is submitted that this is not a KSR issue, and that the opinion in KSR does not dispose of this issue.

KSR Should not Preclude Grant of a Rehearing

For the reasons presented above, the *KSR* decision should not preclude grant of a rehearing, and Applicants should be given the opportunity to pursue before the Board the *Silverman et al.* and other issues raised in the Request for Rehearing.

Respectively submitted,

Dated: July 26, 2007



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